IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

WP(C).No. 28477 of 2005(M)

PETITIONER:

SMITHA RAJAN. J.L., AGED 28 YEARS,
W/O. SAJU KUMAR, LILLY VILASAM,
VAZHUTHOOR, NEYYATTINKARA P.O.,
TRIVANDRUM.

BY ADV. SRI.GEORGE ABRAHAM

RESPONDENTS:

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1. **KERALA STATE PUBLIC SERVICE COMMISSION, REP. BY ITS SECRETARY, PATTOM, TRIVANDRUM.**

2. **DISTRICT OFFICER, KERALA STATE PUBLIC SERVICE COMMISSION, DISTRICT OFFICE, KOTTAYAM.**

3. **DIRECTOR OF TRAINING, DEPARTMENT OF INDUSTRIAL TRAINING, THYCAUD, TRIVANDRUM.**

4. **DIRECTOR OF AGRICULTURE, SOIL CONSERVATION, CHALAI P.O., TRIVANDRUM.**

5. **SAM EDWARD. Y., NAYATHUPARAMBIL HOUSE, PYLIYANCODE, CHEMBAZHANTHI P.O., TRIVANDRUM-695 587.**

6. **C.J. MANOJ, CHIRAYIL HOUSE, MANGANAM P.O., KOTTAYAM-686 018.**

BY ADV. SRI.ALEXANDER THOMAS,SC,KPSC for R1 & R2
SRI.K.G.SARATHKUMAR for R6
SRI.JEBBY KUTTAN V.MATHEW
SRI.S.RADHAKRISHNAN for R5
BY SR.GOVERNMENT PLEADER SRI. NANDAKUMAR for R3 & R4

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF NOTIFICATION ISSUED BY KERALA PUBLIC SERVICE COMMISSION PUBLISHED IN MALAYALA MANORAMA DTD. 10/08/2000.

EXT.P2: COPY OF CERTIFICATE NO.13/97 ISSUED BY GOVERNMENT OF KERALA DTD. 28/03/98.

EXT.P3: COPY OF PROVISIONAL NATIONAL CERTIFICATE ISSUED TO PETITIONER DTD. 30/09/99.

EXT.P4: COPY OF COMMUNICATION DTD. 9/01/2002 ISSUED BY PUBLIC SERVICE COMMISSION.

EXT.P5: COPY OF CERTIFICATE DTD. 14/01/2002 ISSUED BY DIRECTOR OF TRAINING.

EXT.P6: COPY OF COMMUNICATION DTD. 15/01/2002 SENT BY DIRECTOR OF TRAINING TO PUBLIC SERVICE COMMISSION.

EXT.P7: COPY OF CERTIFICATE DTD. 23/01/2002 ISSUED BY DIRECTOR OF TRAINING.

EXT.P8: COPY OF COMMUNICATION DTD. 22/05/2002 ISSUED BY PUBLIC SERVICE COMMISSION.

EXT.P9: COPY OF CERTIFICATE ISSUED BY NATIONAL COUNCIL FOR VOCATIONAL TRAINING DTD. 14/08/02.

EXT.P10: COPY OF INTERIM ORDER PASSED BY HON'BLE HIGH COURT IN C.M.P.24534/02 IN O.P.NO.14534/02 DTD. 10/09/02.

EXT.P11: COPY OF RANK LIST PUBLISHED BY P.S.C.DTD. NIL.

EXT.P12: COPY OF THE ADDENDUM NOTIFICATION ISSUED BY P.S.C. DTD. 4/03/03.

EXT.P13: COPY OF DETAILS OF ADVICE FOR KOTTAYAM DISTRICT IN VARIOUS CATEGORIES PUBLISHED IN MATHRUBHUMI THOZHIL VARTHA DTD. 17/09/2005.

WPC.NO.28477/2005 M

EXT.P14: COPY OF JUDGMENT DTD. 14/12/2005 IN O.P.NO.14534 OF 2002.

EXT.P15: COPY OF CERTIFICATE NO.A10-14300/2000 DTD.25/05/2000 ISSUED BY TAHSILDAR, THIRUVANANTHAPURAM.

EXT.P16: COPY OF LETTER NO.AV(3)17987/99/GW DTD. 22/05/2003 ISSUED BY THE SECRETARY, KERALA PUBLIC SERVICE COMMISSION.

EXT.P17: COPY OF COMMUNICATION ISSUED BY DIRECTOR GENERAL OF EMPLOYMENT AND TRAINING DTD. 12/09/2007.

5TH RESPONDENT'S EXHIBITS:

EXT.R5(A): COPY OF THE MEMO NO.K II(2)2750/2000 ON 05/11/2002.

EXT.R5(B): COPY OF THE ORDER NO.E(4)13565/02 DTD. 17/12/2002.

EXT.R5(C): COPY OF THE ORDER NO.E (4)13565/02 DTD. 20/05/2003.

EXT.R5(D): COPY OF THE ORDER NO.E(4)7915/05 DTD. 28/05/2005.

/TRUE COPY/

P.S.TO JUDGE

KSS

V.GIRI, J.

W.P.(C).No.28477 of 2005 M

Dated this the 16th day of November, 2007.

JUDGMENT

By Ext.P1 notification issued by the Public Service Commission, applications were invited for the post of Work Superintendent in the Soil Conservation Department. Qualifications for the said post prescribed as per Ext.P1 dated 10.8.2000, are: SSLC (mandatory) and Technical qualifications which, as alternatives includes, a certificate issued by the Director General of Resettlement and Employment in Draftsman's Training. The petitioner applied for the said post. Written examination was conducted on 06.08.2000. By Ext.P4 dated 09.01.2002 Public Service Commission required the petitioner to produce the qualifying certificate from the concerned authority. Apparently, this was done by producing Exts.P3 and Ext.P9. Ext.P9 is a certificate issued by the Secretary of the National Council for Vocational Training functioning under the Ministry of Labour, called as National Trade Certificate, certifying that the petitioner completed the course of training, at the Institute of Engineering Technology, ITC,

Kanjiramkulam and passed the prescribed trade test in the trade of Surveyor in July, 1999. Ext.P3 is a provisional certificate relating to the same, as such, issued on a date prior to Ext.P9. Petitioner then approached the Department of Industrial Training, where from Ext.P5 certificate was issued stating that trainees who pass the All India Trade Test are given National Trade Certificates issued by the Director General of Employment and Training, Ministry of Labour, Government of India, New Delhi. Ext.P5 further goes to say that the Designation of the Director General of Re-settlement and Employment has since been changed into Director General of Employment and Training and the certificates issued in the various trades under Craftsman Training Scheme are named as National Trade Certificates. Ext.P5 further certifies that the National Trade Certificate in Surveyor is the re-designated name of diploma in Craftsmanship in Surveyor. Apparently, Ext.P5 was enclosed along with Ext.P6, which is a communication addressed to the Secretary of the Public Service Commission by the Director of Training. The re-designation of Director General of Re-settlement and

Employment as the Director of Employment and Training is again reiterated in Ext.P6. Ext.P7 is almost a duplication of Ext.P5 except to the effect that the date is 23.1.2002. Ext.P3, P5, P6, P7 and P9 were produced before the Public Service Commission and the petitioner claims that Ext.P9 certificate which, as stated above, is a National Trade Certificate issued by the Secretary of National Council for Vocational Training is one of the qualifications, which is prescribed in Ext.P5 notification.

2. It seems that the Public Service Commission took the view that Ext.P9 certificate cannot be considered as one which conforms to the description of a “certificate issued by the Director General of Re-settlement and Employment in the Survey of Trade under the Craftsman Training scheme”. It seems that the objections raised by the Public Service Commission is that the certificate held by the petitioner Ext.P9 was not issued by the Director General of Re-settlement and Employment and therefore, it cannot be considered as one issued by the competent authority. In consequence thereof, by Ext.P8 memo issued from the District Office of the

Public Service Commission, petitioner's application was rejected. The reason stated in Ext.P8 is that the petitioner has not produced the Government order showing that the petitioner's qualifications are in terms of the notification. This aspect is further elaborated in the statement to the effect that no Government order which declares that the National Trade Certificate in Surveyor is equivalent to the notified qualification is produced as such.

3. Thereupon, the petitioner approached this court in W.P.(C)No.14534/02. This court by Ext.P10 order directed the Public Service Commission to consider the petitioner for selection to the post of Work Superintendent treating him as qualified provisionally. She was directed to be included in the short list and final rank list. But advice was to be made only after obtaining orders from this court. Pursuant to the interim order, by Ext.P12 addendum notification, petitioner's name was included in the final list.

4. During the pendency of the writ petition, by Ext.P13 order, the 5th respondent herein was advised and appointed.

5. When W.P.(C)No.14534/02 was taken up for consideration, respondents 5 and 6 were already appointed as Work Superintendents. Petitioner, thereupon, instituted the present writ petition not only reiterating all the contentions in W.P.(C) No.14534/02, but also questioning the procedure adopted by the Public Service Commission, including the selection, advice and appointments of respondents 5 and 6. It is submitted that the 6th respondent was advised on 5.11.2002 and appointed on 17.12.2002. The instant writ petition was filed on 4.10.2005, almost 3 years after the appointment of the 5th respondent. By interim order passed on 27.1.2006, this court clarified that the confirmation, if any, of the 5th respondent will be subject to the result of the writ petition. By another interim order passed on 24.4.2006, this court further passed an order, after hearing both sides, that the delay in the disposal of the writ petition shall not prejudice any of the parties and accordingly, the advice and appointment of the 6th respondent was made, subject to the final orders passed in this writ petition.

6. A statement has been filed by the Director of Training and counter affidavits have been filed by the Public Service Commission and respondents 5 and 6.

7. The main contention raised by the Public Service Commission is that Ext.P9 certificate is not issued in terms of Ext.P1 notification, inasmuch as that, the certificate is not one issued by the Director General of Re-settlement and Training, the authority specifically referred to in the notification. With regard to the certificate issued by the Director of Training, Department of Industrial Training, Government of Kerala, namely Ext.P5 as also the communication from the said Director Ext.P6 and the further certificate issued by the said Director Ext.P7, the Public Service Commission contends that this cannot be considered as a declaration of any qualification as an equivalent qualification by the Government as such. It is contended that the certificate which was required was the certificate which must have been issued by the Director General of Re-settlement and Employment and Ext.P9 is not which answers the said description.

8. Standing counsel for the Public Service Commission submits that the Commission may not be expected to a conduct a roving enquiry, as to whether the version given by the Director of Training in Exts.P5 and P6 is correct or not. According to him, that is an ex post facto assessment. He further contends that, if at all, the Government should have issued a circular declaring that the certificate in Ext.P9 will be equivalent to the one notified. It is true that if at all qualification is to be treated as an equivalent qualification to the prescribed qualification, a declaration of equivalence, either by the Government or by the Public Service Commission, should normally be either earlier or at least, contemporaneous to the notification. But, what is done here is not a declaration of a qualification as an equivalent qualification. In sum and substance, what is contended by the petitioner is that she possesses the prescribed qualification, inasmuch as that according to her, the certificate issued by the National Trade Certificate for Vocational Training, Ext.P9 one issued by the competent authority viz., the Director General of Employment and Training and this

is evidenced by Ext.P17. A perusal of Ext.P17 will show that as per the guidelines issued by the Ministry of Labour, Government of India, New Delhi in the training manual, (copy of the said Manual is produced before me, at the time of final hearing), the Director General of Employment and Training shall be called as Director General of Re-settlement and Employment and she is the Secretary to the National Council for Vocational Training. It is the Director General of Re-settlement and Employment, acting as the Secretary to the National Council for Vocational Training who issued Ext.P9 certificate, inasmuch as that he is the authority to conduct the All India Trade Test all over India and he is the authorised signatory to issue Ext.P9. In other words, his contention is that the certificate Ext.P9 is to be treated as one coming under the prescribed qualifications.

9. Is there any reason to disbelieve the version given by the Director of Training in Exts.P5, P6 and P7, which is actually reiterated in the statement of the Director of Training filed before this court? In the absence of any other version which indicates the contra, I am of the view that it would

be improper to simply reject the version given by the Director of Training, who is also the Head of a Government Department. There is no contrary version given by the 4th respondent, who is the appointing authority, in relation to the post in question. The version given in Ext.P17 is culled out from the Government of India publication called as “training manual for the Institute, Second Edition, upto April, 2002, which was produced before me by the learned counsel for the petitioner for my perusal.

10. In these circumstances, the stand taken by the Public Service Commission that the petitioner does not possess the prescribed qualification on the premise that Ext.P9 is not issued by the competent authority as such, is neither legal nor sustainable, in the sense that the certificate Ext.P9 is issued by the Director General of Employment and Training, who was earlier called as the ‘Director of Re-settlement and Employment, the notified authority in Ext.P1 notification and the certificate issued by him Ext.P9 is a National Trade Certificate in Surveyor Trade, which was earlier named as Survey Trade Certificate under the Craftsman Trade Scheme” as per G.O.(MS)

No.678/60/AD dated 11.8.1960 referred to in Ext.P1 notification. In other words, the petitioner possesses one of the qualifications prescribed in Ext.P1 notification. Since she is otherwise considered as eligible, the petitioner should have been included in the rank list in the appropriate place.

11. As noted above, pursuant to the interim order, the petitioner was included in Ext.P12 rank list issued by the Public Service Commission and as a consequence thereof, petitioner's inclusion in the appropriate place in Ext.P1 rank list must be treated as confirmed and the Public Service Commission shall pass consequential orders to the said effect. What remains is the issue of appropriate directions to the Public Service Commission to advice the petitioner in consequence of her being included in the rank list as such. Obviously, one among the contesting respondents will have to face the consequence. Insofar as the 5th respondent is concerned, as noted above, he was advised on 5.11.2002, appointed on 17.12.2002 and probation was declared on 28.2.2005, the present writ petition was filed on 5.10.2005. Therefore, obviously, it is inequitable and impermissible to disturb the

appointment of the 5th respondent. Insofar as 6th respondent is concerned, he was advised on 27.1.2005 and on 27.1.2006 this court had, by an interim order, stayed the confirmation of 6th respondent. 6th respondent belongs to other backward community and the petitioner belongs to SIUC community. SIUC Nadars are also to be treated as other backward community in terms of Ext.P16 order, a decision taken by the Public Service Commission taking note of the interim order passed in S.L.P.NO.3461/01 and connected cases. If that be so, then obviously it is the 6th respondent, who is to give way to the petitioner, in circumstances where the petitioner is otherwise qualified and eligible to be selected to the post of Work Superintendent.

In the result, the writ petition is allowed. It is declared that the petitioner is eligible to be selected and appointed to the post of Work Superintendent in the Soil Conservation Department in terms of Ext.P1 notification. Ext.P8 rejection memo issued by the Public Service Commission is quashed. The Public Service Commission is directed to confirm the inclusion of the petitioner in the rank list in

terms of Ext.P12. The Commission shall also issue orders cancelling the advice of the 6th respondent. Needful shall be done by the Public Service Commission within a period of one month from the date of receipt of a copy of this judgment. Consequently, Public Service Commission shall also issue an advice memo to the petitioner to the post in question without any further delay. Needless to say, on receipt of the advice, the 4th respondent shall issue orders of appointment in relation to the petitioner without delay.

Sd/-

(V.GIRI)

JUDGE

sk/

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